

MEMORANDUM

November 1, 2006

TO: Ad Hoc Agricultural Policy Working Group

FROM: Marlene Michaelson, Senior Legislative Analyst
Jeff Zyontz, Legislative Attorney
Amanda Mihill, Legislative Analyst

SUBJECT: November 6, 2006 Meeting

Our next meeting is scheduled for November 6, 2006 from 4:00 p.m. to 6:00 p.m. in Room A at the Upcounty Regional Services Center. The agenda has very little time for each item. **We would like you to plan on staying until 7:00 p.m. to be assured that the proposed agenda can be completed.** Attached are additional background materials for this meeting. These include the following:

- An agenda.
- Minutes from the October 23 meeting.
- A staff policy paper on TDR issues.
- Updated Information from M-NCPPC on TDR tracking.
- Papers related to the outstanding issues related to Child Lots and Sand Mounds.
- The list of potential principles previously distributed to the Group.
- The list of follow-up issues previously distributed to the Group.

The November 6 meeting is the last meeting scheduled prior to the Staff preparation of a draft report. In addition to resolving outstanding issues related to Child Lots, Sand Mounds, and TDRs, the Staff needs direction from you as to what you would like to see as an introduction to the report. Are there overriding policy issues you believe should be addressed? (We have provided the "Principles" that could be used as a basis for discussion on this topic) Should the introduction describe the meetings and the process by which you reached consensus? Are there other issues you believe need to be addressed? In addition, we need direction as to whether you want to include any comments in the Report on the list of follow-up issues previously circulated to the Group.

The Working Group briefly talked about a comprehensive program to educate all residents of the County to the importance of the Agricultural Preserve. The Co-chairs believe that a description of such a program should be in the Working Group's final report. This program could include any or all of the following: pamphlets, events, a "speaker on call" list, coordination with Montgomery County Public Schools, special programs for after-school children's groups and seniors, public service announcements, an advertising campaign, cable TV programming, and a web site.

At the last meeting we distributed one chapter of the report to serve as a model for the format we plan to use (describing the Group's recommendations on right-to-farm issues). Please let us know as soon as possible if you are comfortable with the **format** used for this model chapter.

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AGENDA

AD HOC AGRICULTURAL POLICY WORKING GROUP

Monday, November 6, 2006
Upcounty Regional Services Center
4:00 to 6:00 p.m.

- 4:00 Approve Minutes
- 4:05 TDR Issues (including brief update from M-NCPPC on TDR tracking)
- 4:45 Finish discussion on providing public water to child lots.
- 5:00 Finalize recommendations on sand mounds.
- 5:15 Discuss Report introduction and whether to include general themes/principles.
- 5:30 Discuss Education Program
- 5:45 Discuss whether to comment on follow-up issues in the report.
- 5:55 Administrative/Calendar Issues
- 6:00 Adjourn

**AD HOC AGRICULTURAL POLICY
WORKING GROUP MINUTES**

Monday, October 23, 2006

4:00 P.M. to 6:30 P.M.

Up-County Regional Services Center Room A

PRESENT

Working Group Members

Liz Tolbert, Chair	Wade Butler
Scott Fosler, Vice-Chair	Margaret Chasson
Jim Clifford	Nancy Dacek
Jane Evans	Tom Hoffmann
Jim O'Connell	Michael Rubin
Drew Stabler	Billy Willard
Bo Carlisle	Robert Goldberg

Montgomery County and State Staff

Nancy Aldous, County Council	Jeremy Criss, County Department of Economic Development
Carol Edwards, County Council	Justina Ferber, County Council
Shondell Foster, County Council	Marlene Michaelson, County Council
Doug Tregoning, Montgomery County Cooperative Extension	Jeff Zyontz, County Council

ABSENT

Margaret Chasson	Wendy Perdue
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GUESTS

Councilmember Mike Knapp	Jay Beatty, County Department of Permitting Services
Pamela Dunn, M-NCPPC	Sherry Kinikin, County Council
Kathy Reilly, M-NCPPC	Chris Sasiadek, M-NCPPC
Leslie Saville, M-NCPPC	Alan Soukup, County Department of the Environment
Mark Symborski, M-NCPPC	David Tobin, M-NCPPC
John Zawitoski, County Department of Economic Development	Andrea Arnold
Vince Berg	Sue Carter
Jane Hunter	Frank Jamison
Michele Rosenfeld	

The Group had before it the October 17, 2006 memorandum with attachments from Marlene Michaelson, Jeff Zyontz, and Amanda Mihill.

The Group approved the minutes for the October 9, 2006 meeting with the following changes:

On page 2, bullet #5, delete the date “October 9” to read “a date certain”.

On page 2, bullet #5 change DEP to DPS.

On page 3, next to the last paragraph in the first sentence, “the Group to decided”, delete the word “to”.

Staff Policy Paper on Pending Legislation. Council staff summarized recently adopted legislation on Private Educational Institutions (PIF), which defines the term “agricultural”, and the Council’s change to the Ten-Year Comprehensive Water Supply and Sewerage Plan.

TDR Easement Restriction. The Group discussed this ZTA and supported reintroduction by the Council, but indicated that the wording should be refined, consistent with discussions at the Planning Board. The Group supported one member’s suggestion that the portions of this ZTA that would prohibit development of non-residential and non-agricultural use on land under easement was critical, but that further thought should be given to the part of the ZTA that would limit TDRs on properties developed with non-residential uses. In particular, further work should be done to consider the link between the number of TDRs relinquished and the size of the non-residential uses.

Impervious Surface Limit ZTA. The Group agreed that the ZTA is no longer needed since the size of PIFs in the Agricultural Reserve is now limited by the prohibition on public water and sewer. If the ZTA were to be reintroduced, an agricultural exemption would need to be an essential part of it.

Temporary Prohibition on Sand Mounds. The time period of the moratorium suggested in this legislation has passed. Group recommendations related to sand mounds may require alternative legislation.

Public Sale of Development Rights. The Group agreed that the Bill should not be enacted.

Staff Policy Paper on Follow-Up Issues on Child Lots. The Group discussed its tentative recommendations on child lots and highlighted the inconsistent policy on public water for child lots. The Group discussed the impact and advantages/disadvantages of the policy presented in the Comprehensive Ten Year Water and Sewer Plan. Three options were identified for the Group’s consideration to address the problem: confirm the existing language in the Ten Year Water and Sewer Plan that allows public water service to be provided; amend the Plan to prohibit the provision of public water to child lots; and amend existing language in the Plan to limit the circumstances in which public water is provided. The Group deferred a decision on this issue until it has completed its discussion of child lots.

The representative from DEP discussed the background and the Council’s discussions of allowing public water for child lots.

The Group discussed at length the issue of requiring ownership versus occupancy pertaining to child lots. The Group agreed that enforcement could be difficult if the County want to monitor occupancy. The Group agreed to require ownership by a living child, at the time of a building permit application, with no ability to lease the property. Enforcement of ownership should be addressed through the title search at sale. Enforcement of the leasing prohibition should be handled on a complaint basis. More extensive enforcement options were considered to be costly, a potential invasion of privacy and not worth the effort.

Creation of a child lot after death of the property owner. The Group agreed that children should be allowed to create a child lot provided there is a written indication of the owner's intent to create a child lot (within life of the child). The Group did not believe that there should be a time limit on the child's ability to create the lot (since the child's lifespan will serve as the time limit).

Options for Child Lots on Small Properties. The Group discussed various options for limiting the number of child lots that could locate on small lots and agreed that no specific limitation was needed for small lots. It did, however, believe that the percentage of land that could be developed should be limited so that a majority of the land is reserved for agriculture. Further work should be completed to determine what percentage of the land must be maintained in agriculture (possibly 70 percent of the farmable land, including woodlands). This requirement could limit the size of child lots on small properties or the location of the child lots but should not decrease the potential number of child lots on a parcel.

Sand Mounds. The Group reviewed previous recommendations related to sand mounds and agreed to the five principles listed in the October 9 minutes (page ii). Two alternatives were proposed to limit the number of sand mounds that should be allowed: One member recommended a proposal of one sand mound per 50 acres, allowing any property under 50 acres a single sand mound, regardless of the size of the property. Other members supported sand mounds only for minor subdivisions. This would limit the number of sand mounds to five, regardless of the size of the property.

One Group member asked how many sand mound applications/permits have come in to DEP. DEP staff offered the following information: Beginning in the year 2000 to present, 67 applications have been received, 49 for new sand mounds and 18 for repairs. The data includes all zones in the County. The breakdown is as follows:

<u>Year</u>	<u># of Sand Mounds</u>
2000	7
2001	6
2002	6
2003	16 (8 were within 1 subdivision)
2004	5
2005	18 (12 in Stoney Springs)
2006	8

One Group member expressed concerns about the impact of building sand mounds - keeping development value out of the land, keeping the possibility for land to change hands, supporting the BLT program and preserving farmland in farm hands.

Since additional issues were brought up during the discussion on sand mounds, the co-chair suggested that the Group could reach an agreement on this issue at the next meeting. Staff will add new information, recalculate the numbers and send it to the Group before the next meeting.

Council staff distributed an example of a possible format for the chapters of the Group's final report.

One member of the Group asked Staff to provide information on how a clustering option could work.

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STAFF POLICY PAPER

FOLLOW-UP ISSUES ON TRANSFERABLE DEVELOPMENT RIGHTS

ISSUES

Draft Date: November 1, 2006

This policy paper addresses various options for changes to the Transferable Development Rights (TDR) program, most of which are designed to increase the number of receiving areas. Many of these options have been considered by other entities in the past. This policy paper summarizes each option and prior recommendations by other groups and also includes staff comments.

1. Should TDR receiving capacity be extended to commercial zones?

TDRs are currently only used in residential zones when there is an increase in residential density. It would be possible to use TDRs in commercial zones when there is an increase in commercial density.

Previous Recommendations: The TDR Task Force recommends residential uses by right in certain commercial zones through use of TDRs with additional studies to determine likely locations and transfer ratios. (See Studies & Report section of Binder at © 12, TDR Task Force Memorandum and Memoranda section of Binder at © 20, Memorandum from Judy Daniel to Montgomery County Planning Board.)

Staff Comments: This concept has been supported by many people and groups and in Staff's opinion should be a high priority and referred to the Planning Department to determine the mechanics of how it will work (e.g., purchase of TDRs for X square feet of additional density or floor area ratio (FAR)). Since there may be a reluctance to use TDRs in areas where the policy is to encourage redevelopment, one option to consider would be to have a 2 tiered program that requires a lesser number of TDRs in redevelopment areas.

2. Should TDR receiving capacity be extended to more high density mixed-use zones (such as the Central Business District zones)

The Council has applied TDRs in mixed-use zones in Shady Grove and Damascus, but only to the residential portion of the development. It would be possible to apply it to the commercial portion as well. Historically, TDRs were not considered in mixed-use zones due to the significant costs of development using the optional method of development (e.g., for public amenities and open space). The optional method of development is an option in most mixed-use zones such as the Central Business District (CBD) zone.

Previous Recommendations: The TDR Task Force recommends the creation of TDR receiving areas with density bonuses in CBD, Transit Station, Town Center, and the higher density residential and mixed use zones used in the vicinity of transit stations. (See Studies & Report section of Binder at © 11, TDR Task Force Memorandum and Memoranda section of Binder at © 20, Memorandum from Judy Daniel to Montgomery County Planning Board.)

Staff Comments: Similar to commercial zones, Staff believes that there is significant potential for receiving areas in mixed-use zones. While historic reasons for not using TDRs in mixed-use zones may still be relevant in some areas, the financial benefits of development in some mixed-use centers, such as Bethesda, should allow for financially viable optional method development, even with TDRs.

3. Should private institutional facilities and special exceptions that result in increased housing density (e.g., senior housing) be required to use TDRs when located on land designated for TDRs?

Private institutional facilities (PIFs) and senior housing are allowed by right or special exception in most residential zones. Neither PIFs, nor senior housing are currently required to purchase TDRs, even if they locate on land with TDR zoning.

Previous Recommendations: The TDR Task Force recommends the use of the TDR Program to significantly increase the number of housing units for the elderly. (See Studies & Report section of Binder at © 9, TDR Task Force Memorandum.)

Staff Comments: These issues have received only limited consideration in the past. Although Staff believes it would be worth examining the potential for TDRs on these facilities, the lesser potential for receiving areas, complications, and potential controversy lead Staff to conclude that these should be lower priorities for consideration. (It may be preferable to establish programs for commercial and mixed-use development before tackling these more difficult opportunities.)

4. Should TDR receiving capacity be required for affordable housing units?

Moderately priced dwelling units (MPDUs) are currently exempt from purchasing TDRs.

Prior Recommendations: The TDR Task Force recommends that TDRs for extra density be used for certain types of priority housing, such as affordable and senior housing. (See Studies & Report section of Binder at © 9, TDR Task Force Memorandum.)

Staff Comments: Requiring TDRs for affordable housing may be seen as a disincentive to increase the amount of affordable housing beyond the minimum required by law. It is unclear where there would be political support for any strategy that could decrease the potential amount of affordable housing. While Staff does not recommend abandoning consideration of this concept, Staff does not believe that it should be a high priority.

5. Should TDR receiving capacity be required for increasing density in floating zone applications or local map amendments?

Floating zones generally allow for an increase in density that can be achieved through a local map amendment rezoning. TDRs have traditionally been applied through Euclidian, rather than floating zones.

Previous Recommendations: The TDR Task Force recommends the adoption of a policy that would allow the use of TDRs to create additional density in a rezoning involving a floating zone that can be proposed outside the master plan process. (See Studies & Report section of Binder at © 8, TDR Task Force Memorandum and Memoranda section of Binder at © 18, Memorandum from Judy Daniel to Montgomery County Planning Board.)

Staff Comments: Floating zones that increase density provide an appropriate opportunity for additional TDRs and Staff believes this should be a high priority. The Planning Department should undertake a study to determine which floating zones are appropriate for TDRs and how the number of TDRs will be calculated.

6. Should the planning process be changed to ensure master plans take every opportunity to maximize the number of receiving areas? Should TDR receiving capacity be required for each site in master plans that increases zoning density or intensity?

Although it is the County's goal to place TDR receiving area wherever appropriate, conflicting policy decisions frequently lead the Planning Department Staff and/or Planning Board to recommend against placing TDRs on sites with increased density (e.g., where redevelopment is encouraged, where the property owner is expected to make significant investments in infrastructure or public amenities or where there is a significant amount of affordable housing).

Previous Recommendations: The TDR Task Force recommends that master plans strive to achieve a "fair share" distribution of TDRs to ensure impacts resulting from intensified use of TDRs (e.g., environmental, community) are not borne disproportionately in a limited number of receiving areas. (See Studies & Report section of Binder at © 7, TDR Task Force Memorandum.)

Staff Comments: While not every site with an increase in density will be appropriate for TDRs, it appears that current practices lead to fewer TDRs than may be appropriate. In Staff's view, there should be an assumed use of TDRs for each site when there is an increase in density, unless there is a **compelling** reason not to use TDRs. The burden of proof should be to prove why TDRs are inappropriate, rather than to argue that they are warranted.

7. Should the County work with local municipalities to establish inter-jurisdictional TDRs to create receiving areas in municipalities?

Rockville and Gaithersburg do not have TDR programs; property owners may try to have their land annexed into one of the cities to escape TDR and affordable housing requirements imposed by the County.

Previous Recommendations: The TDR Task Force recommends the discussion between the County and larger county municipalities regarding inter-jurisdictional transfers of TDRs to receiving sites in these municipalities. (See Studies & Report section of Binder at © 8 to 9, TDR Task Force Memorandum.)

Staff Comments: Inter-jurisdictional TDRs would present a way to increase the number of receiving areas and prevent the loss of receiving areas on County property that may be annexed. Since there is little direct benefit to Rockville or Gaithersburg from placing TDRs on properties in those municipalities, Staff believes that the County must develop incentives to encourage their participation.

8. Is the requirement that receiving areas use 2/3 of the possible TDRs beneficial? Would eliminating this provision increase the use of TDRs (particularly on small or constrained properties where it is impossible to use 2/3 of the possible TDRs)?

The Zoning Ordinance requires that development that use TDRs must use at least “two-thirds of the number of development rights permitted to be transferred to the property under the provisions of the applicable master plan approved by the district council.” This requirement may be waived by the Planning Board only if it finds that it would be desirable for environmental or compatibility reasons (Montgomery County Zoning Ordinance, § 59-C-1.393(b)).

Previous Recommendations: The TDR Task Force recommends the reduction of the TDR minimum use requirement for properties of 20 acres or less to 25% capacity when the TDR receiving zone density is at least 10 dwelling units per acre. In addition, The TDR Task Force recommends the elimination of the TDR minimum use requirement for properties of 5 acres or less when the TDR receiving zone capacity is 20 dwelling units per acre or fewer. (See Studies & Report section of Binder at © 9 to 10, TDR Task Force Memorandum and Memoranda section of Binder at © 15, Memorandum from Judy Daniel to Montgomery County Planning Board.)

Staff comments: Staff believes that market forces will determine whether a property owner is likely to use TDRs to increase density (e.g., where the profit from an additional house is significantly greater than the cost of a TDR). The 2/3 requirement is unlikely to convince a property owner who might otherwise have created only a few TDRs to build to meet the 2/3 requirement. Eliminating this requirement could increase the number of TDRs and Staff agrees it should be pursued further.

9. Are the existing easements associated with development rights sufficient to protect agricultural land into the future or are additional protections needed to ensure that elected officials will not be pressured to change the zoning and negate the protections of the easements in the future?

Several individuals have expressed the fear that a future Council could decide to increase the zoning in the Agricultural Reserve and have questioned whether the easements will provide sufficient protection from increased density.

Previous Recommendations: Although concerns have been raised that a future Council could change the zoning in the RDT zone, Staff is not aware of any previous recommendations to address this possibility.

Staff comments: There is nothing in the TDR easement that bars the County from changing RDT zoning in the future. In the highly unlikely event that a future Council increases the

number of houses permitted in the RDT zone (up-zone), the easement restrictions would remain in effect until terminated. A termination of the easement would require the agreement of the County and the landowner. However unlikely, if the County up-zoned the property, it might also take actions to terminate easements subject to the consent of landowners.

One option to at least partially address this concern is to amend the Zoning Ordinance to require that any zoning action that would increase the density of RDT zoned land require a super majority of the Council (6 instead of 5 votes). Some zoning acts now require the affirmative vote of 6 Councilmembers.

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Summary of TDR Tracking

Farmland preservation through the use of Transferable Development Rights (TDRs) has been active in Montgomery County since 1981. TDRs that are severed from the farmland by easement can be held by the landowner, or sold to another party. The buyer of the TDR(s) can also hold the TDR(s), sell the TDR(s), or use the TDR(s) as a means of increasing density elsewhere in the county.

Tracking TDRs involves the recordation of the TDR from the time it is severed from the land by easement, through the sale of the TDR recorded by deed, until the TDR is extinguished by use in a preliminary plan and subsequent recording on a subdivision plat. Tracking TDRs requires the collection of data from two different sources. The Montgomery County Attorney's Office records all easements and deeds that are created in Montgomery County. This is the primary source of data on TDRs.

Once a TDR(s) is severed from the land, an easement is recorded. The easement records the date, the TDR serial number, the tax identification number associated with the parcel, the acreage of the parcel, the grantor and grantee of the easement, location of the parcel, number of dwelling units on the parcel, TDR capacity of the parcel, and the number of TDRs being severed. A distinct liber and folio (book and page) for the easement assigned by the county are also recorded.

If the TDR(s) is then sold, a deed will record additional information relevant to tracking the TDR. The deed records the sale date, the buyer and seller of the TDR(s), the number of TDRs sold, the TDR serial number(s), the liber and folio of the easement that severed the TDR(s), the liber and folio of the deed, and frequently, the location and description of the parcel from which the TDR(s) was severed.

Additional information used to track TDRs comes from the County Tax Assessors Office. This information includes current acreage of the parcel, number of dwelling units on the parcel, improvements to the parcel, the tax identification number of any child lots associated with the parcel, as well as the landowners name and address. This data is used as a cross reference to the data supplied by the County Attorney's Office.

Consolidation of the above data creates a data file for any tax identification number that involves a TDR. This data is matched to MNCPPC data on preliminary plan information. If a TDR is extinguished by use on a preliminary

plan, the preliminary plan number is attached to the file and recorded for each individual TDR.

Since 1981, Montgomery County's TDR program has severed by easement approximately 9,688 TDRs. Of the 9,688 TDRs that have been severed, only 5,890 have been transferred to receiving areas by recording a subdivision plat. This indicates that 3,709* TDRs have been severed and perhaps changed ownership, but for various reasons have not been attached to a receiving area by recording a subdivision plat.

* Note – There is a discrepancy between the total number of TRDs severed and the number of those extinguished plus those that have not equaling 89 TDRs. We are still in the process of “cleaning” the data and will likely resolve this number in the near future.

Glossary of Terms

TDR - Transferable Development Right –The conveyance of development rights by deed, easement, or other legal instrument, authorized by local law, to another parcel of land and the recordation of that conveyance among the land records of Montgomery County.

TDR Capacity – The potential number of TDRs that can be created or severed from a particular parcel of land. This is the number of acres of the parcel divided by 5, as TDRs are assigned based on the 1:5 zoning ratio that was in existence prior to creation of the Agricultural Reserve. This capacity figure does not distinguish between TDRs necessary for dwelling units, “retained” TDRs or “excess”TDRs.

Severed -To be recorded by easement among the land records of Montgomery County.

Retained TDR- Also referred to as a “development” TDR, they are the TDRs that must be held by the landowner for the property to be developed in accordance with the zoning law. For example, a 100 acre farm can sever 20 TDRs; however 4 TDRs must be retained with the land if the landowner intends to construct dwellings at the 1:25 zoning rate.

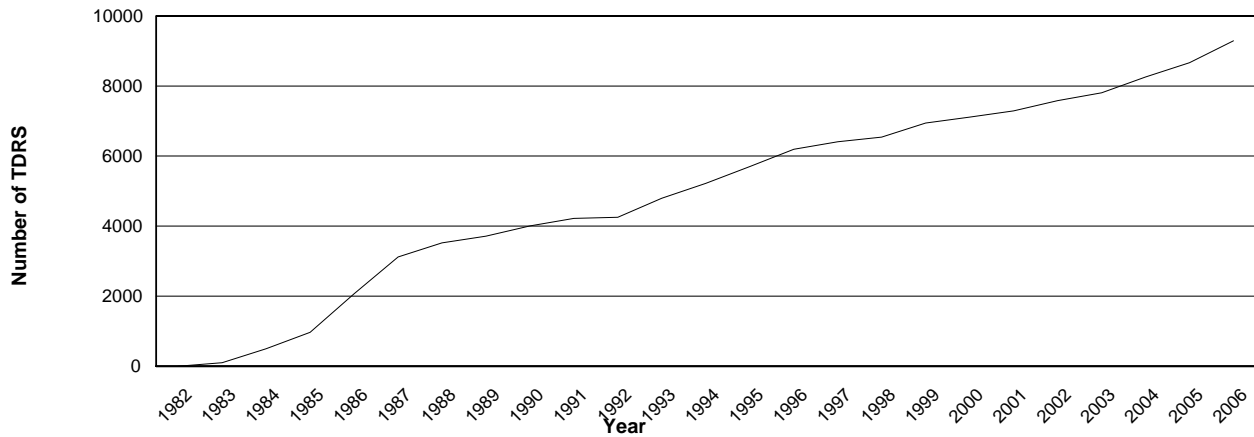
Excess TDR- Also referred to as a “transferable” TDR, these TDRs can be sold to another party without impacting the landowner’s ability to develop in accordance the 1:25 acre zoning designation.

Extinguished TDR - TDRs that have been severed, sold by deed, and recorded on a preliminary plan of subdivision.

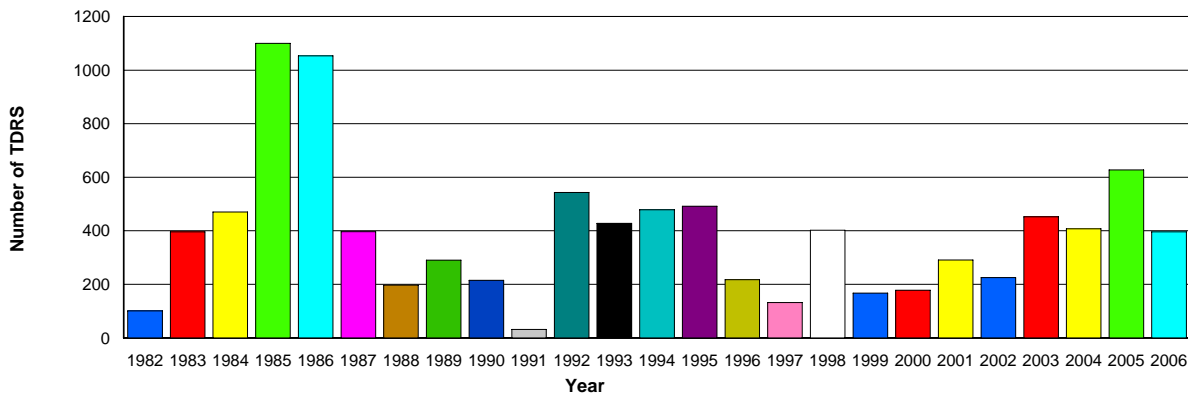
***Note:** Severed TDRs may include “retained” and “excess” TDRs. The number of current dwelling units on a property determine the total number of TDRs that can be sold or extinguished.

Total TDRS Severed	9688
TDRS Severed and Extinguished	5890
TDRS Severed but not Extinguished	3709

Total Number of TDRS by Year



TDRS Severed by Year



Number of TDRS by Acreage of Sending Parcel

0-25 Acres	404
26-50 Acres	804
51-100 Acres	1447
101-150 Acres	1553
150-200 Acres	894
Greater Than 200 Acres	4585

STAFF POLICY PAPER
FOLLOW-UP ISSUE ON CHILD LOTS AND PUBLIC WATER
Draft Date: November 1, 2006

After the Group was formed, the Council received a request for a Water Category Change to allow a child lot in the RDT zone to receive public water. The Council deferred action on this request and asked the Group to consider it.

PROBLEM STATEMENT

The Comprehensive Ten Year Water and Sewer Plan is inconsistent with the Master Plan for the Preservation of Agriculture as to whether child lots should be allowed to have public water. When a request for an extension of water service for a child lot in the RDT zone came before the Council, the Transportation and Environment (T&E) Committee deferred action and asked the Working Group to comment on this issue.

RELEVANT DOCUMENTS

The Master Plan for the Preservation of Agriculture recommends denying “public water and sewer service to areas designated for agricultural preservation that utilize the Rural Density Transfer Zone (RDT).”

In 1999, the County Council adopted a comprehensive update of the Ten-Year Water and Sewer Plan that included, for the first time, a policy allowing for the consideration of providing public water service for child lots. The 2003 update of the Plan (Chapter 1, Section II.E.9) states:

Community [public] water service may be provided to support the subdivision of lots for the children of owners of qualifying properties. Montgomery County’s zoning and subdivision regulations make special provisions for the creation of these lots which are generally located in the more rural areas of the county, primarily in the Rural Cluster, Rural and Rural Density Transfer Zones. The size of the lots to be considered for service under this policy is intended to be in the range of those included in the water service for large lot provisions in Section II.D.1.; between 1 and 5 acres...Water service in these cases is generally intended to be provided from abutting water mains, although water main extensions can be considered where those extensions are consistent with the requirements for large lot development, as previously cited. The provision of community service under this policy shall not be used as justification for the connection of intervening or nearly lots or parcels if they would not otherwise be entitled to connect to community systems.

Department of Environmental Protection (DEP) staff developed the policy for the 1999 Plan update in response to the County Council’s action in May 1999 approving a water category change for a child lot in the RDT Zone along Kemptown Road near Damascus. In this case, an abutting water main was available to serve these properties. Since the inclusion of the policy in the Water and Sewer Plan, DEP has addressed only two category change requests under its

provisions: a request approved in 2001 for several child lots on a parcel zoned Rural Cluster on Batson Road near Spencerville, and the request recently deferred by the Council for the RDT-zoned properties on Bethesda Church Road west of Damascus.

IMPACT OF POLICY

One advantage of the policy presented in the Comprehensive Ten Year Water and Sewer Plan is that it allows a property owner adjacent to a water line to take advantage of the existing line and availability of public water. DEP staff have stated that there can be a water quality benefit to adding homes to public water lines in more remote locations, such as where existing water mains terminate in the RDT Zone. An increase in water demand, and the resulting greater flow in these mains, can help to improve water quality for the customer by reducing the amount of time that treated water sits unused in the system. The use of public water service instead of an on-site well may also provide for better flexibility in siting septic systems, which must be located at least 100 feet from a well and are usually located at a lower elevation from a well.

One potential disadvantage of a policy to allow public water in the RDT zone is that it could increase the number of lots in cases where it is not possible to locate a well on a site and the availability of public water results in a buildable lot. On site constraints (e.g., excessive slopes, marginally suitable soils, adjacent wells) can make it difficult to locate both a well and a septic system on a particular piece of property. The portion of the RDT zone served by public water lines is limited (see map attached on © 14) and DEP believes that the number of circumstances in which the availability of public water alone could create new potential for a buildable lot are limited.

Another impact is that properties that receive public water are no longer eligible for state easement programs or the BLT program as tentatively recommended by the Group. This could increase the appeal of residential development (at 1 unit per 25 acres) over preservation through an easement program.

ALTERNATIVES TO ADDRESS THE PROBLEM

Staff has identified 3 options for the Groups' consideration:

1. Confirm the existing language in the Ten Year Water and Sewer Plan that allows public water service to be provided.
2. Amend the Ten Year Water and Sewer Plan to prohibit the provision of public water to child lots.
3. Amend the existing language in the Ten Year Water and Sewer Plan to limit the circumstances in which public water is provided. Potential limitations include the following:
 - a. Only when the child lot can be served from an existing, abutting water main and service to the property would not provide the opportunity for service to other RDT properties.

- b. Only when there is an existing home served by a well or a proposed home that could otherwise be served by a well (so that the policy does not increase the number of houses possible in the Agricultural Reserve).
- c. Only when public water service can be provided in a manner that would not prevent the future application for a State or County easement for farmland preservation (e.g., if public water is provided on the edge of a lot and would not jeopardize application for the rest of the property).

COMPARISON OF OPTIONS TO LIMIT THE USE OF SAND MOUNDS

In the last meeting, the Group identified two options for limiting the potential number of sand mounds in the Agricultural Reserve. This chart compares the key attributes of the 2 options for the portion of the Agricultural Reserve that can not easily be served by deep trench system.

	One Sand Mound per 50 Acres (properties under 50 acres would also be allowed one sand mound)	Sand Mounds Only Permitted for Subdivisions of 5 Units or less¹
Total Number of Sand Mounds (assuming sand mounds percs for every eligible property) ²	300	377
Limits on large properties	Allows sand mounds (at one unit per 50 acres) for large properties.	Limits ability to use sand mounds for any properties over 149 acres.
Limits on small properties	May limit the potential number of sand mounds (if you assume that sand mound percs can be achieved at greater than one to 50 acres).	No limit on sand mounds for properties less than 150 acres (but zoning will limit development to 5 units).
Number of units	No limit on total; depends on size of property.	No more than 5 units, regardless of the size of the property.
Size of lot	No limit on maximum; may result in very large lots	Lot size must average no more than 5 acres.
Protection of contiguous farmland	Not necessarily; would require design guidelines.	Limit on lot size and total number of units means that a greater percentage of the land will be preserved as farmland, particularly on lots greater than 150 acres.

¹ Requirements for Minor Subdivisions are described on the following page.

² The potential number of sand mounds with no restrictions is 557. This assumes no limit on the ability to find percs for sand mounds (which is unrealistic) and that small parcels would not combine to increase potential housing yield. These numbers are only for the portion of RDT zoned land that cannot easily use deep trench septic system; the vast bulk of this land is west of I-270.

Requirements for a Minor Subdivision¹

The Montgomery County Code Section 50-35A(a) addresses Minor Subdivisions- Approval Procedure. Specified in this section of the code are eight types of lots which qualify under the Minor Subdivision provision and do **not** require submission of a preliminary plan:

1. Minor Lot Line Adjustment
2. Conversion of an Outlot into a Lot
3. Consolidation of Two or More Lots or a Part of a lot into One Lot
4. Further Subdivision of a Commercial, Industrial or Multi-Family Residential Lot to Reflect a Change in Ownership, Deed, Mortgage or Lease Line
5. Plat of Correction
6. Plats for Certain Residential Zoned Parcels Created by Deed Prior to June 1, 1958
7. Plats for Existing Places of Worship, Private Schools, Country Clubs, Private Institutions and Similar Uses Located on Unplatted Parcels
8. Plats for Certain Residential Lots located in the RDT Zone

Minor subdivision Procedures in a RDT Zone- Sec. 50-35A(a)(8)(a-e).

- Permitted up to 5 lots under the minor subdivision procedure and must not exceed an average lot size of 5 acres in size UNLESS approved by the Planning Board in reviewing the *pre*-preliminary plan² of subdivision
- Must submit a pre-preliminary plan for a minor subdivision and such plan is approved by the Planning board or Planning Board Staff
- Must obtain written approval for a proposed septic area from the Montgomery County Department of Permitting Services, Well, and Septic prior to recordation of the plat
- Any street dedications along the frontage of the proposed lots must be shown on the record plat
- All easement must be recorded for the balance of the property noting the density and TDRs and have been utilized for the new lots.

Procedure for Platting a Minor Subdivision 50-35A(b):

- If the owner of a Minor Subdivision satisfies the requirements of Section 50-35(a), the owner of the property may submit an application for record plat for approval in accordance with the provisions sec. 50-36 and 50-37.
- Any lot created through minor subdivision must satisfy all applicable zoning requirements (Chap. 59)

¹ The definition of a Minor Subdivision according to Section 50-1 of the Montgomery County Code defines a Minor Subdivision as the division, resubdivision or assemblage of a lot, tract or parcel of land, including minor adjustments to existing lot lines, that does not require the approval of a preliminary plan of subdivision prior to the submittal of a record plat application.

² Sec. 50-33. Preapplication submissions.

Subdivision applicants are authorized to submit informal preapplication plans, including location maps, sketch plans and such other information as is necessary, and seek advice from and confer with the planning staff, and if appropriate, the subdivision review committee and, in the case of major features, with the board, prior to formal submission of a preliminary plan. (Mont. Co. Code 1965, § 104-22; Ord. No. 8-92, § 1.)

D R A F T
Agricultural Working Group
General Principles

(Note that these principles are not presented in order of importance.)

1. The economic viability of the agricultural industry is critical to the preservation of the Agricultural Reserve. While the open space and environmental protection elements of the Agricultural Reserve are important, they alone will not be sufficient justification for preserving one-third of the County into the future.
2. Agriculture in the County has and will continue to evolve and requires an environment that recognizes that fact.
3. The equity farmers hold in their property is not only important to them personally but an important asset for their businesses. Any new program or policy to discourage development must be evaluated in terms of its impact on farmers' equity.
4. Large contiguous areas of farmland are necessary for agriculture. Fragmentation of that critical mass of farmland should be avoided.

ADDITIONAL AGRICULTURE ISSUES

The Council's resolution establishing the Ad Hoc Agricultural Working Group intentionally limited the scope of the Group's work. The purpose of this list is to identify issues not specifically identified in the resolution that the Group believes requires further work. Due to time constraints, these issues will probably have to be assigned to the Planning Board, Department of Economic Development, an existing Advisory Committee or another entity.

RELATED TO RDT LAND

Related to zoning:

1. Should the uses and/or special exceptions allowed in the RDT zone be limited or expanded (e.g., to limit institutional uses or allow children's day camps)? Should pending legislation be approved that prohibits future development of any non-residential use, other than those related to agriculture? Should the County designate additional areas for the "Rural Service Zone"?
2. Should new development standards/zoning be created or used for developments and subdivisions in the RDT zone (e.g., to allow smaller lots, require rural preservation design standards, etc.).
3. Should public road requirements be changed to allow more dwelling units to access private drives in rural areas (Planning Department page 7)

Related to tenant homes

4. What actions should be taken to ensure that tenant homes are occupied by farm employees and not resold or rented to non-agricultural residential users?
5. Should the number of tenant homes be limited?

Related to development rights:

6. Should RDT land owners be allowed to hold onto development rights indefinitely or should a time limit be set? If a date certain is set by which land owners must sell all development rights, then the County will probably need to establish a TDR bank to purchase outstanding development rights and sell them to property owners in receiving areas at a later time.
7. Should the County set up a new TDR bank to facilitate the buying and selling of TDRs? Once the bank has run out of development rights, it could still collect funds from property owners who want to use TDRs and use those funds to promote agricultural programs.

8. Are the existing easements associated with development rights sufficient to protect agricultural land into the future or are additional protections needed to ensure that elected officials will not be pressured to change the zoning and negate the protections of the easements in the future?

RELATED TO TDRs

9. Should a development right be required to be used for non- agricultural and non-residential uses in the RDT zone?
10. Should TDRs on public land be extinguished (to reduce the number that must be sold and prevent competition with privately held TDRs)?
11. Should TDR receiving capacity be extended to commercial zones?
12. Should TDR receiving capacity be extended to more high density mixed-use zones (such as the Central Business District zones)
13. How the planning process be changed to ensure that the maximum number of receiving areas are identified as the Planning Board and Council establish zoning through the master plan process? Should TDR receiving capacity be required for each site in master plans that increases zoning density or intensity?
14. Should TDR receiving capacity be required for affordable housing units?
15. Should TDR receiving capacity be required for increasing density through a special exception use?
16. Should TDR receiving capacity be required for increasing density in floating zone applications/local map amendments?
17. Should the County work with local municipalities to establish inter-jurisdictional TDRs to create receiving areas in municipalities
18. Is the requirement that receiving areas use 2/3 of the possible TDRs beneficial? Would eliminating this provision increase the use of TDRs (particularly on small or constrained properties where it is impossible to use 2/3 of the possible TDRs)
- 19. Are there additional ways to keep land as farmland, (rather than being converted for residential development) other than the easement programs (existing and proposed) discussed by**

the group? What role can non-profit entities play in this effort?

20. Do any of the needed policy changes require an amendment to the Master Plan for the Preservation of Agriculture and Rural Open Space or can all needed modifications occur through changes to the zoning ordinance and other County laws?

21. What changes are needed regarding roads in the Agricultural Reserve and rustic roads in particular?

22. Are changes needed to County laws and regulations impacting rustic roads?

23. How can we better educate citizens regarding the value of the Agricultural Reserve?

24. Should the County consider

- Brochures
- Signs at major entrance points and/or marker on major roads
- Enhancing the County's website on agricultural issues
- Programs to educate County students about the Agricultural Reserve

25. Can we better define the different groups that have an interest in the Agricultural Reserve and identify outreach strategies that will reach out to each different stakeholder group?

26. What changes are needed to the County's efforts to monitor the economic health and evolution of the agricultural industry in the County and to County programs to promote the health of this industry? (Note that this question is intended to address issues unrelated to land use.)

27. How can the County ensure a focus on sustainable agriculture and not just the preservation of farmland?

28. What additional analysis is needed of changing trends in farming and opportunities for alternative/small scale farming?

29. How should the County monitor and react to the impact on farming from

- Environmental legislation

- Deer management

30. What state and local environmental laws impact farming and are any modifications needed?

31. What impact do the County's deer management programs have on farming and are any changes required?

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